



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center**  
**Newark, NJ 07102**  
[www.bpu.state.nj.us](http://www.bpu.state.nj.us)

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION OF NEON )  
CONNECT, INC. FOR AUTHORITY TO PROVIDE )  
LOCAL EXCHANGE AND INTEREXCHANGE )  
TELECOMMUNICATIONS SERVICES IN THE )  
STATE OF NEW JERSEY )

ORDER

DOCKET NO. TE03030230

(SERVICE LIST ATTACHED)

BY THE BOARD:

Pursuant to N. J. S. A. 48:2-1 et seq. and Section 253 of the federal Telecommunications Act of 1996, 47 U.S.C. §151 et seq., and by letter dated March 25, 2003, NEON Connect, Inc. ("Petitioner" or "NEON") filed a Petition with the New Jersey Board of Public Utilities ("Board") requesting authority to provide competitive facilities-based local exchange and interexchange telecommunications services in the State of New Jersey. Pursuant to the Open Public Records Act N.J.S.A. 47:1A-1 et seq., Petitioner has submitted its financial information under seal and has included a sworn affidavit with substantiation for confidential treatment in order to limit the availability of proprietary information.

NEON Connect, Inc. is a wholly-owned subsidiary of NEON Communications, Inc., ("NEON Communications") a privately held corporation organized under the laws of the State of Delaware. Petitioner's principal offices are located at 2200 West Park Drive, Westborough, MA 01581.

Petitioner has submitted copies of its Certificate of Incorporation from the State of Delaware and its New Jersey Certificate of Authority to Operate as a Foreign Corporation. According to the Petition, NEON was formed to provide competitive facilities-based local exchange and interexchange telecommunications services, both Intra Local Access and Transport Area ("IntraLATA") and Inter Local Access Transport Area ("InterLATA"), throughout the State of New Jersey. Petitioner states that it has filed a Statement of Business Operations with the Massachusetts Department of Telecommunications and Energy to provide competitive telecommunications services in Massachusetts. Petitioner is awaiting approval from the public utilities commissions of Maine and New Hampshire to operate as a competitive service provider

in those states. According to the Petition, NEON's affiliates, Northeast Optic Network of Connecticut, Inc. and Northeast Optic Network of New York, Inc. have been authorized to provide competitive telecommunications services in Connecticut and New York, respectively. Petitioner states there have not been any civil or criminal proceedings instituted against NEON in any jurisdiction. Petitioner further states that should the Board grant the authorization requested herein, NEON will file an initial tariff subject to the Board's approval.

In its Petition, the Company seeks authority to provide competitive facilities-based local exchange and interexchange telecommunications services, both IntraLATA and InterLATA, throughout the State of New Jersey. NEON Communications owns and operates approximately 2,500 miles of fiber optic network and related facilities in the Mid-Atlantic and New England States. It currently provides wholesale telecommunications services to incumbent and competitive local exchange carriers, interexchange carriers and wireless telecommunications companies, and point-to-point transmission and dedicated access services to Internet service providers, applications service providers and end-users. Such services include, but are not limited to, Synchronous Optical Network ("SONET") private line service, Central Office access service, Lambda (high-capacity) fiber transport service, Ethernet private line service, SONET virtual private network service, custom private optical network solutions, network control service, collocation service and dark fiber service. The Petitioner plans to deploy facilities, where technically and economically feasible, to provide local exchange and interexchange services to end-users. NEON intends to provide such services in the Mid-Atlantic and New England States.

Petitioner requests a waiver of N. J. S. A. 48:3-7.8 and N. J. A. C. 14:1-4.3 which require that books and records be kept within the State of New Jersey and be maintained in accordance with the Uniform System of Accounts ("USOA"), respectively. In the interest of efficiency and to prevent undue burden, Petitioner requests permission to maintain its books and records in accordance with Generally Accepted Accounting Principles and to keep all books, records, documents and other writings incident to the conduct of Petitioner's business in the State of New Jersey at Petitioner's corporate offices in Westborough, Massachusetts. Petitioner also states, upon written notice from the Board, it will provide its books and records at such time and place within New Jersey as the Board may designate and will pay any reasonable expenses for examination of the records.

Petitioner asserts that approval of its Petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Petitioner also asserts that approval of this Petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings.

With regard to its technical and managerial qualifications, NEON states that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Petitioner has submitted the professional biographies of its key personnel who, according to NEON, are well qualified to execute its business plans and have extensive managerial and technical experience in the telecommunications industry.

## DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et. seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to, a demonstration of financial, technical and managerial integrity.

In considering this Petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's declaration that it is the policy of the State to provide diversity in the supply of telecommunications services, and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N. J. S. A. 48:2-21.16(a)(4); N. J. S. A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed NEON's Petition and the information supplied in support thereof, the Board FINDS that the Petitioner is in compliance with the Board's filing requirements which are necessary to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES the Petitioner to provide local exchange and interexchange telecommunications services throughout New Jersey subject to approval of its tariff. The Board also FINDS that in accordance with N. J. S. A. 48:2-59 and 48:2-60 and N. J. S. A. 52:27E-61 and 52:27E-62, the Petitioner is subject to an annual assessment by both the Board and Division of Ratepayer Advocate, respectively. The Board notes that the Petitioner will not be permitted to provide telecommunications services until a tariff is approved by the Board.

The Board HEREBY ORDERS that:

- 1) Petitioner file its tariff for Board approval.
- 2) Pursuant to N. J. S. A. 48:2-16.3, Petitioner shall file an annual report as of December 31 of each year, which is due on or before March 31 of the following year.
- 3) Pursuant to N. J. S. A. 48:2-59 and 48:2-60, Petitioner shall file a statement of gross intrastate revenues from operations form (AR3-1) as of December 31 of each year, which is due on or before June 1 of the following year.

On or before February 1<sup>st</sup> of each year, the Petitioner will receive from the Division of Audits, an annual report package and a statement of gross intrastate revenues from operations form for the preceding calendar year. The purpose of these documents is to report the company's financial information and gross intrastate revenues from operations as of December 31 of each year. The annual report and a statement of gross intrastate revenues from operations form is due on or before March 31 and June 1 of the following year, respectively. If Petitioner does not receive these documents, it is Petitioner's responsibility to obtain them from the Board. It is also the Petitioner's responsibility to ensure timely filing of these reports.

Regarding the Petitioner's request for waivers of the Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements

that the Petitioner maintain its books and records in accordance with USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board books and records upon 48 hours notice, and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES the Petitioner's request for the exemptions from maintaining its books and records in accordance with USOA and in New Jersey.

DATED: 6/5/03

BOARD OF PUBLIC UTILITIES  
BY:

(SIGNED)

\_\_\_\_\_  
JEANNE M. FOX  
PRESIDENT

(SIGNED)

\_\_\_\_\_  
FREDERICK F. BUTLER  
COMMISSIONER

(SIGNED)

\_\_\_\_\_  
CAROL J. MURPHY  
COMMISSIONER

(SIGNED)

\_\_\_\_\_  
CONNIE O. HUGHES  
COMMISSIONER

(SIGNED)

\_\_\_\_\_  
JACK ALTER  
COMMISSIONER

ATTEST:

(SIGNED)  
KRISTI IZZO  
SECRETARY

IN THE MATTER OF THE PETITION OF NEON CONNECT, INC. FOR  
AUTHORITY TO PROVIDE LOCAL EXCHANGE AND INTEREXCHANGE  
TELECOMMUNICATIONS SERVICES IN THE STATE OF NEW JERSEY

**DOCKET NO. TE03030230**

**SERVICE LIST**

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